

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: HERUM EXCAVATION, L.L.C.; Emmet County, Iowa	ADMINISTRATIVE ORDER NO. 2012-AQ- 16 NO. 2012-WW- 16 NO. 2012-SW- 15
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TO: Scott Herum
Herum Excavation, L.L.C.
4681 110th Street
Dolliver, IA 50531

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Herum Excavation, L.L.C. for the purpose of resolving violations related to the demolition and site clearing of a former motel and mobile home park in Estherville, Iowa

Questions regarding this Order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand
Spencer IA 51301-2200
Phone: 712-262-4177

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance

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with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Scott Herum owns and operates Herum Excavation, L.L.C., a company specializing in demolition work and site grading. The business is located at 1700 410th Street, Estherville, Iowa. Mr. Herum owns a property located at 1704 Central Avenue, Estherville. The site formerly contained the Cozy Grove Motel and also contained 7 mobile home units.

2. On August 4, 2011, DNR Field Office #3 received a complaint from Terry Reekers, Emmet County Emergency Management Coordinator. Mr. Reekers had been informed by Kenny Juhl of the Emmet County Board of Adjustment that Herum Excavation, L.L.C. was demolishing buildings and mobile homes from the Cozy Grove Motel in Estherville. Mr. Juhl indicated that the mobile homes were being dumped on a farm near Ryan Lake in rural Emmet County.

3. On August 5, 2011, DNR Environmental Specialist Senior Bryon Whiting visited the property at 1704 Central Avenue, Estherville. On that date he observed that all buildings and mobile homes had been removed from the site and that the site had been graded down to bare dirt. The total area of the site is 1.52 acres. Photographs were taken. Mr. Whiting then proceeded to a farm at 2031 430th Avenue in rural Emmet County. Mr. Whiting observed at least three mobile homes and various scrap tin in a burn pile. The material appeared to have been generated during mobile home demolition. Photographs were taken. Records obtained from the Emmet County Assessor indicate that the property is owned by Scott Olson.

4. On August 5, 2011, Scott Herum called Bryon Whiting. Mr. Herum indicated that all of the solid waste generated from the demolition of the Cozy Grove Motel had been disposed of at the Northern Plains Landfill. Mr. Herum sent an email to Bryon Whiting with his monthly invoice for the landfill but the invoice did not show specifically what had been delivered to the landfill.

5. Also on August 5th, Bryon Whiting requested the assistance of Emmet County Chief Deputy Sheriff Kevin Olson to determine whether the mobile homes at the Scott Olson property had come from the Cozy Grove Motel site. Deputy Olson indicated that he observed Scott Herum moving mobile homes from the Cozy Grove Motel site on August 3rd.

6. On August 15, 2011, Bryon Whiting was informed by Deputy Kevin Olson that he had spoken with Scott Olson and Mr. Olson had informed him that he had initially agreed to take the mobile homes from Scott Herum for demolition and recovery of scrap metal. Scott Olson then changed his mind and decided not to take them. Scott Olson indicated to Deputy

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Kevin Olson that he changed his mind again after Scott Herum offered to pay him \$1,000 and deliver the mobile homes. Scott Olson agreed to this offer and accepted the mobile homes for salvage.

7. On August 19, 2011, Bryon Whiting received a fax from Tom Wuehr of the DNR's Air Quality Bureau. The fax contained the Notification of Demolition and Renovation for the demolition and asbestos disposal from the Cozy Grove Motel. The document did not include the asbestos inspection or removal for any of the seven mobile homes.

8. On August 22, 2011, Bryon Whiting received an email from Scott Herum acknowledging that he had not obtained storm water permit coverage for the earth work done at the Cozy Grove Motel site. Mr. Herum indicated that this failure was due to the fact that Mr. Whiting had not notified him of the need to obtain permit coverage. Mr. Herum further indicated that the mobile homes had been given to local farmers for personal use.

9. On August 23, 2011, Bryon Whiting sent an email to Scott Herum requesting the names and addresses of the local farmers to which the mobile homes were alleged to have been given.

10. On August 26, 2011, a Notice of Violation letter was sent to Herum Excavation, L.L.C. and Scott Herum based upon the illegal disposal of solid waste, the failure to inspect the mobile homes for asbestos prior to demolition, the failure to submit required asbestos documentation to the DNR, and the failure to obtain storm water permit coverage.

11. On January 25, 2012, the DNR received an unsigned statement from Brent Howing. Mr. Howing indicated that he had worked with Scott Olson on the demolition of the mobile homes which were delivered to Mr. Olson's property by Scott Herum. Mr. Howing indicated that he and Olson negotiated with Herum in regard to the acceptance of the trailers and that Herum agreed to pay them \$1,000 to accept the trailers which Herum would deliver to the property. Mr. Herum informed Mr. Olson and Mr. Howing that the required asbestos inspections had been conducted. Mr. Howing further indicated that Herum offered to bury the remaining debris after the scrap metal was recovered from the trailers.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to 567 IAC 23.1(3), the State of Iowa has adopted the federal asbestos standards as set forth at 40 CFR 61.145. The federal regulations require facilities to be inspected for the presence of asbestos prior to demolition or renovation and the submission of notification of demolition or renovation activities prior to such activities. The above-stated facts establish violations of these provisions.

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3. Iowa Code section 455B.173(3) authorizes the Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" includes clearing, grading and excavation activities which disturb one acre of total land or more.

4. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the DNR to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above-stated facts disclose a violation of these provisions.

5. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented violations of these provisions by Herum Excavation, L.L.C.

V. ORDER

THEREFORE, the DNR hereby orders Herum Excavation, L.L.C. to pay a penalty in the amount of \$10,000 within 30 days of the execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the storm water violations involved in this matter. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

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2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$10,000. The administrative penalty is determined as follows:

Economic Benefit – Herum Excavation, L.L.C. has achieved an economic benefit from the violations documented herein. The illegal open dumping of solid waste results in the avoidance of time, labor and disposal costs. The Northern Plains Regional Landfill, which accepts waste from the geographic area that includes the Herum property, charges \$383.68 per mobile home disposed of at the landfill for a total avoided cost of \$2,685.76. A one year storm water NPDES General Permit No. 2 costs \$175. The publication of the required public notices to obtain storm water general permit coverage is estimated to be \$50. The total cost of implementation of required best management practices to comply with the storm water general permit requirements is estimated to be \$670, including the development of the storm water pollution prevention plan, implementation of best management practices, inspecting, and reporting. The failure to inspect the mobile homes for asbestos and submit proper notification is estimated to have resulted in a cost savings of at least \$700. Based upon these factors, a penalty of \$4,280 is hereby assessed for economic benefit.

Gravity – The violations documented herein cover multiple program areas and multiple potential environmental impacts. Failure to conduct asbestos inspection creates a serious risk of harm to human health during the demolition or disposal of the mobile homes. Failure to obtain a storm water permit and comply with the requirements of the permit endangers the waters of the state. The illegal disposal of solid waste can contaminate groundwater and surface water and in this case, violates an administrative order entered into by Scott Herum earlier this year. In order to maintain this enforcement action at the administrative level, a penalty of only \$3,500 is hereby assessed for gravity.

Culpability – Scott Herum and Herum Excavation, L.L.C. is in the business of demolition and excavation. The regulations violated by Herum Excavation, L.L.C. are a routine part of the excavation and demolition business. Furthermore, Scott Herum entered into an administrative consent order in 2011 due to past violations of environmental regulations. In order to maintain this enforcement action at the administrative level, a penalty of only \$2,220 is hereby assessed for culpability.

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VII. APPEAL

Pursuant to Iowa Code section 455B.138, 455B.175 and 455B.308 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal.

VIII. NONCOMPLIANCE

Failure to comply with this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.175 and 455B.307. Total compliance with all provisions of Section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this Order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of
June, 2012.

Field Office 3; I.C(7)(A); VI.C; VII.C(4)